

AMENDED IN SENATE JUNE 16, 2004
AMENDED IN ASSEMBLY MAY 24, 2004
AMENDED IN ASSEMBLY MAY 5, 2004
AMENDED IN ASSEMBLY APRIL 27, 2004
AMENDED IN ASSEMBLY APRIL 16, 2004
AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2611

Introduced by Assembly Member Simitian

February 20, 2004

An act to amend Section 368 of the Penal Code, and to amend ~~Section~~ *Sections 15656 and 15657* of, and to add Section 15657.5 to, the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2611, as amended, Simitian. Elder and dependent adult abuse.

(1) Existing law proscribes crimes against elder and dependent adults involving physical and financial abuse.

Existing law establishes criminal penalties for the willful abuse of an elder or dependent adult, when the person who permits or inflicts the abuse has knowledge that the victim is an elder or dependent adult.

This bill would revise the above standard to impose the existing penalties regardless of whether the person has knowledge that the victim may be an elder or dependent adult *and would make conforming*

changes. By changing the definition of an existing crime this bill would impose a state-mandated local program.

(2) Existing law includes provisions relating to the award of attorney's fees and costs, and damages to a plaintiff, when it is proven by clear and convincing evidence that a defendant is liable for physical abuse, neglect, or financial abuse, and the defendant has also been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse.

This bill would revise these provisions to change the standard of proof for the commission of financial abuse ~~without to a preponderance of the evidence, but to permit additional recovery where there is clear and convincing evidence of~~ recklessness, oppression, fraud, or malice ~~for financial abuse to a preponderance of the evidence.~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 368 of the Penal Code is amended to
2 read:

3 368. (a) The Legislature finds and declares that crimes
4 against elders and dependent adults are deserving of special
5 consideration and protection, not unlike the special protections
6 provided for minor children, because elders and dependent adults
7 may be confused, on various medications, mentally or physically
8 impaired, or incompetent, and therefore less able to protect
9 themselves, to understand or report criminal conduct, or to testify
10 in court proceedings on their own behalf.

11 (b) (1) Any person who, under circumstances or conditions
12 likely to produce great bodily harm or death, willfully causes or
13 permits any elder or dependent adult to suffer, or inflicts thereon
14 unjustifiable physical pain or mental suffering, or having the care
15 or custody of any elder or dependent adult, willfully causes or
16 permits the person or health of the elder or dependent adult to be



1 injured, or willfully causes or permits the elder or dependent adult
2 to be placed in a situation in which his or her person or health is
3 endangered, is punishable by imprisonment in a county jail not
4 exceeding one year, or by a fine not to exceed six thousand dollars
5 (\$6,000), or by both that fine and imprisonment, or by
6 imprisonment in the state prison for two, three, or four years.

7 (2) If in the commission of an offense described in paragraph
8 (1), the victim suffers great bodily injury, as defined in Section
9 12022.7, the defendant shall receive an additional term in the state
10 prison as follows:

11 (A) Three years if the victim is under 70 years of age.

12 (B) Five years if the victim is 70 years of age or older.

13 (3) If in the commission of an offense described in paragraph
14 (1), the defendant proximately causes the death of the victim, the
15 defendant shall receive an additional term in the state prison as
16 follows:

17 (A) Five years if the victim is under 70 years of age.

18 (B) Seven years if the victim is 70 years of age or older.

19 (c) Any person who, under circumstances or conditions other
20 than those likely to produce great bodily harm or death, willfully
21 causes or permits any elder or dependent adult to suffer, or inflicts
22 thereon unjustifiable physical pain or mental suffering, or having
23 the care or custody of any elder or dependent adult, willfully
24 causes or permits the person or health of the elder or dependent
25 adult to be injured or willfully causes or permits the elder or
26 dependent adult to be placed in a situation in which his or her
27 person or health may be endangered, is guilty of a misdemeanor.
28 A second or subsequent violation of this subdivision is punishable
29 by a fine not to exceed two thousand dollars (\$2,000), or by
30 imprisonment in a county jail not to exceed one year, or by both
31 that fine and imprisonment.

32 (d) Any person who is not a caretaker who violates any
33 provision of law proscribing theft, embezzlement, forgery, or
34 fraud, or who violates Section 530.5 proscribing identity theft,
35 with respect to the property or personal identifying information of
36 an elder or a dependent adult is subject to imprisonment in a county
37 jail not exceeding one year, or in the state prison for two, three, or
38 four years, when the money, labor, goods, services, or real or
39 personal property taken or obtained is of a value exceeding four
40 hundred dollars (\$400); and by a fine not exceeding one thousand

1 dollars (\$1,000), by imprisonment in a county jail not exceeding
2 one year, or by both that fine and imprisonment, when the money,
3 labor, goods, services, or real or personal property taken or
4 obtained is of a value not exceeding four hundred dollars (\$400).

5 (e) Any caretaker of an elder or a dependent adult who violates
6 any provision of law proscribing theft, embezzlement, forgery, or
7 fraud, or who violates Section 530.5 proscribing identity theft,
8 with respect to the property or personal identifying information of
9 that elder or dependent adult, is subject to imprisonment in a
10 county jail not exceeding one year, or in the state prison for two,
11 three, or four years when the money, labor, goods, services, or real
12 or personal property taken or obtained is of a value exceeding four
13 hundred dollars (\$400), and by a fine not exceeding one thousand
14 dollars (\$1,000), by imprisonment in a county jail not exceeding
15 one year, or by both that fine and imprisonment, when the money,
16 labor, goods, services, or real or personal property taken or
17 obtained is of a value not exceeding four hundred dollars (\$400).

18 (f) Any person who commits the false imprisonment of an elder
19 or a dependent adult by the use of violence, menace, fraud, or
20 deceit is subject to imprisonment in the state prison for two, three,
21 or four years.

22 (g) As used in this section, “elder” means any person who is
23 65 years of age or older.

24 (h) As used in this section, “dependent adult” means any
25 person who is between the ages of 18 and 64, who has physical or
26 mental limitations which restrict his or her ability to carry out
27 normal activities or to protect his or her rights, including, but not
28 limited to, persons who have physical or developmental
29 disabilities or whose physical or mental abilities have diminished
30 because of age. “Dependent adult” includes any person between
31 the ages of 18 and 64 who is admitted as an inpatient to a 24-hour
32 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
33 the Health and Safety Code.

34 (i) As used in this section, “caretaker” means any person who
35 has the care, custody, or control of, or who stands in a position of
36 trust with, an elder or a dependent adult.

37 (j) Nothing in this section shall preclude prosecution under
38 both this section and Section 187 or 12022.7 or any other provision
39 of law. However, a person shall not receive an additional term of
40 imprisonment under both paragraphs (2) and (3) of subdivision (b)

1 for any single offense, nor shall a person receive an additional term
2 of imprisonment under both Section 12022.7 and paragraph (2) or
3 (3) of subdivision (b) for any single offense.

4 *SEC. 1.5. Section 15656 of the Welfare and Institutions Code*
5 *is amended to read:*

6 15656. (a) Any person who, under circumstances or
7 conditions likely to produce great bodily harm or death, willfully
8 causes or permits any elder or dependent adult, ~~with knowledge~~
9 ~~that he or she is an elder or a dependent adult,~~ to suffer, or inflicts
10 unjustifiable physical pain or mental suffering upon him or her, or
11 having the care or custody of any elder or dependent adult,
12 willfully causes or permits the person or health of the elder or
13 dependent adult to be injured, or willfully causes or permits the
14 elder or dependent adult to be placed in a situation such that his or
15 her person or health is endangered, is punishable by imprisonment
16 in the county jail not exceeding one year, or in the state prison for
17 two, three, or four years.

18 (b) Any person who, under circumstances or conditions other
19 than those likely to produce great bodily harm or death, willfully
20 causes or permits any elder or dependent adult, ~~with knowledge~~
21 ~~that he or she is an elder or a dependent adult,~~ to suffer, or inflicts
22 unjustifiable physical pain or mental suffering on him or her, or
23 having the care or custody of any elder or dependent adult,
24 willfully causes or permits the person or health of the elder or
25 dependent adult to be injured or willfully causes or permits the
26 elder or dependent adult to be placed in a situation such that his or
27 her person or health may be endangered, is guilty of a
28 misdemeanor.

29 (c) Any caretaker of an elder or a dependent adult who violates
30 any provision of law prescribing theft or embezzlement, with
31 respect to the property of that elder or dependent adult, is
32 punishable by imprisonment in the county jail not exceeding one
33 year, or in the state prison for two, three, or four years when the
34 money, labor, or real or personal property taken is of a value
35 exceeding four hundred dollars (\$400), and by a fine not exceeding
36 one thousand dollars (\$1,000), or by imprisonment in the county
37 jail not exceeding one year, or by both that imprisonment and fine,
38 when the money, labor, or real or personal property taken is of a
39 value not exceeding four hundred dollars (\$400).

1 (d) As used in this section, “caretaker” means any person who
2 has the care, custody, or control of or who stands in a position of
3 trust with, an elder or a dependent adult.

4 (e) Conduct covered in subdivision (b) of Section 15610.57
5 shall not be subject to this section.

6 SEC. 2. Section 15657 of the Welfare and Institutions Code
7 is amended to read:

8 15657. Where it is proven by clear and convincing evidence
9 that a defendant is liable for physical abuse as defined in Section
10 15610.63, or neglect as defined in Section 15610.57, and that the
11 defendant has been guilty of recklessness, oppression, fraud, or
12 malice in the commission of this abuse, ~~and that the defendant has~~
13 ~~been guilty of or has demonstrated or exhibited recklessness,~~
14 ~~oppression, fraud, or malice in the commission of this abuse,~~ the
15 following shall apply, in addition to all other remedies otherwise
16 provided by law:

17 (a) The court shall award to the plaintiff reasonable attorney’s
18 fees and costs. The term “costs” includes, but is not limited to,
19 reasonable fees for the services of a conservator, if any, devoted to
20 the litigation of a claim brought under this article.

21 (b) The limitations imposed by Section 377.34 of the Code of
22 Civil Procedure on the damages recoverable shall not apply.
23 However, the damages recovered shall not exceed the damages
24 permitted to be recovered pursuant to subdivision (b) of Section
25 3333.2 of the Civil Code.

26 (c) The standards set forth in subdivision (b) of Section 3294
27 of the Civil Code regarding the imposition of punitive damages on
28 an employer based upon the acts of an employee shall be satisfied
29 before any damages or attorney’s fees permitted under this section
30 may be imposed against an employer.

31 SEC. 3. Section 15657.5 is added to the Welfare and
32 Institutions Code, to read:

33 15657.5. (a) Where it is proven by a preponderance of the
34 evidence that a defendant is liable for financial abuse, as defined
35 in Section 15610.30, in addition to all other remedies otherwise
36 provided by law, the court shall award to the plaintiff reasonable
37 attorney’s fees and costs. The term “costs” includes, but is not
38 limited to, reasonable fees for the services of a conservator, if any,
39 devoted to the litigation of a claim brought under this article.

(b) Where it is proven by ~~clear and convincing~~ *a preponderance of the* evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, and ~~where it is proven by clear and convincing evidence~~ that the defendant committed that abuse with recklessness, oppression, fraud, or malice, in addition to *reasonable attorney's fees and costs set forth in subdivision (a)*, and all other remedies otherwise provided by law, the following shall apply:

~~(1) The court shall award to the plaintiff reasonable attorney's fees and costs. For purposes of this subdivision, "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.~~

~~(2)~~

(1) The limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

~~(3)~~

(2) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer.

(c) Nothing in this section affects the award of punitive damages under Section 3294 of the Civil Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.